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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,427	09/19/2001	Shigeo Toji	1259-0217P-SP	9463

2292 7590 10/25/2005

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EXAMINER
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YODER III, CHRISS S

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/955,427

Applicant(s)

TOJI ET AL.

Examiner

Chriss S. Yoder, III

Art Unit

2612

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1 and 3-14.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

Continuation of 3. NOTE: By adding dependent claim 5 to the independent claim 1, creates new dependency issues that change the scope of the other dependent claims .

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed September 9, 2005 have been fully considered but they are not persuasive.

Applicant argues, with respect to claim 1, that Dotsubo does not produce its "title image" in accordance with the subject image as set forth in the claimed invention, but instead sets the "title image" at VGA, regardless of the resolution of the subject image. However, the examiner points out that Dotsubo, in column 11, line 56 - column 12, line 20, discloses that the resolutions are matched by interpolating or thinning. For example in figure 20, if the "photographed image" (subject image in application) is QVGA, in step S301 the resolution is not found to be VGA, therefore it moves on to step S305, and there, it is also found to not be XGA, therefore it moves on to step S309, and then the "title image" (information image in the application) is thinned to match the "photographed image" in QVGA.

Applicant also argues that the "title image" is not produced in accordance with the pixel number of the taken subject image. However, the examiner points out that Dotsubo, in column 11, line 56 - column 12, line 20, discloses that the resolutions are matched by interpolating or thinning. For example in figure 20, if the "photographed image" (subject image in application) is QVGA, in step S301 the resolution is not found to be VGA, therefore it moves on to step S305, and there, it is also found to not be XGA, therefore it moves on to step S309, and then the "title image" (information image in the application) is thinned to match the "photographed image" in QVGA. Applicant also argues, with respect to claim 1, that Miyamoto does not disclose each pixel being multiplied by a predetermined coefficient and summed up because Miyamoto is performing the operation on the "subject image" and not the "information-image". However, the examiner disagrees, pointing out column 5, lines 1-6 to disclose each pixel being multiplied by a predetermined coefficient and summed up. The examiner also points out that Miyamoto does not disclose that the operation is performed on a "subject image", and that the Miyamoto reference does not disclose the use of two images, and therefore, the examiner is only relying on the process of each pixel being multiplied by a predetermined coefficient and summed up.

Applicant argues, with respect to claim 4, that Dotsubo and Miyamoto do not disclose the use of intervals between letters in the "title image" or the effect thereof of having such intervals, and that it appears that the Examiner is merely using improper hindsight in alleging that Dotsubo discloses such a feature based on design choice. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues that Dotsubo makes no reference to brightness level of the "title image" being calculated, and that Dotsubo's calculations and equations are all relative to the "photographed image data" and not the "title image" data. However, the Examiner points out that in Figure 8, that Dotsubo discloses if the image is the "title image" in step S29, then the image is sent to steps S31-S33, for the image to be binarized (calculate the brightness levels) and filtered. .



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PRIMARY EXAMINER